REMARKS

Claims 1-5, 7, 11, 12 and 14-16 are pending in this application. Claims 1, 4 and 11 have been amended. No new matter has been introduced. Claim 6 has been canceled and its limitations have been incorporated in amended independent claim 1. Claims 8-10 have been canceled and their limitations have been incorporated in amended independent claim 11.

Claims 1-5 and 7 are rejected under 35 U.S.C. §102(b) as being anticipated by Weber (U.S. Patent No. 5,286,255) ("Weber"). This rejection is respectfully traversed.

The claimed invention relates to an arthroscopic instrument. As such, amended independent claim 1 recites an "arthroscopic instrument" comprising *inter alia* "a shaft," "a handle extending from the shaft" and "a lever disposed pivotably on the handle and manipulable by a user to toggle between two opposed positions . . . symmetric with respect to each other and relative to a transverse axis of the shaft." Amended independent claim 1 also recites "a rod extending along the shaft and linking the articulating mechanism to the lever, wherein the lever includes a cam mechanism that engages and cooperates with the rod to move the rod longitudinally within the shaft to operate the articulating mechanism."

Weber relates to a "surgical forceps" that includes "a handle squeezable to move the movable jaw relative to the stationary jaw to rearwardly or forwardly cut tissue or grasp tissue." (Abstract). According to Weber, a "suction passage is formed in the forceps for aspirating cut tissue and assisting the positioning of tissue between the jaws, and suction can be produced continuously or controlled via the handle." (Abstract).

Weber does not anticipate the subject matter of claims 1-5 and 7. Weber does not disclose an "arthroscopic instrument" having "a shaft," "a handle extending from the shaft" and "a lever disposed pivotably on the handle and manipulable by a user to toggle between two opposed positions . . . symmetric with respect to each other and relative to a transverse axis of the shaft," as claim 1 recites. Structure 150 of Weber (which would arguably correspond to the "lever" of the claimed invention) is not "disposed pivotably on the handle and manipulable by a user to toggle between *two opposed* positions," much less "disposed pivotably on the handle and manipulable by a user to toggle between two opposed positions . . . symmetric with respect to each other and relative to a transverse axis of the shaft." Structure 150 of Weber is a "moveable hand grip member or handle" (col. 6, ll. 26-27) which does not "toggle between two opposed positions" or between "two opposed positions . . . symmetric with respect to each other and relative to a transverse axis of the shaft," as in the claimed invention.

In the Office Action dated June 12, 2007, the examiner asserts that "in Fig. 1, Weber discloses a movable handle that toggles towards a stationary handle into an opposed position relative to a transverse axis of the shaft." (June 12, 2007 Office Action at 4). Applicants submit that claim 1 of the application recites a lever manipulable to toggle "between two opposed positions," and not "into an opposed position relative to a transverse axis of the shaft." In addition, claim 1 as amended recites "two opposed positions being symmetric with respect to each other and relative to a transverse axis of the shaft." Structure 150 of Weber is a "moveable hand grip member or handle" (col. 6, ll. 26-27) which does not toggle between "two opposed positions . . . symmetric with respect to each other and relative to a transverse axis of the shaft."

Weber also does not disclose "a rod extending along the shaft and linking the articulating mechanism to the lever, wherein the lever includes a cam mechanism that engages and cooperates with the rod to move the rod longitudinally within the shaft to operate the articulating mechanism," as amended independent claim 1 recites. Weber teaches that "plunger 184 is mounted in a hole in the actuating arm 154 of the movable handle 150 medially between the elbow 153 and the fingers 162" and that plunger 184 "includes a tip 186 positioned in the path of movement for the locking pin 178 and blocking movement of the locking pin 178" (col. 7, ll. 20-28), and not a "cam mechanism that engages and cooperates with the rod to move the rod longitudinally within the shaft to operate the articulating mechanism," as claim 1 recites.

For at least these reasons, Weber fails to anticipate the subject matter of claims 1-5 and 7, and withdrawal of the rejection of these claims is solicited.

Claims 11, 12 and 14-16 are rejected 35 U.S.C. §103(a) as being unpatentable over Weber in view of Watschke et al. (U.S. Patent Appl. Publication No. 2003/0023250) ("Watschke"). This rejection is respectfully traversed.

Amended independent claim 11 reads on the embodiment of Fig. 8 and recites an "arthroscopic instrument" comprising *inter alia* "a shaft," "a multi-member, pliers-like grip, the grip including: a stationary handle extending from the shaft" and "a movable lever disposed pivotably and manipulable by a user to toggle between two opposed positions . . . wherein the stationary handle and the movable lever are substantially symmetric relative to a longitudinal axis of the instrument when the stationary handle and the movable lever are in a closed position, and wherein the stationary handle and the movable lever are asymmetrical with respect to the longitudinal axis of the instrument when the stationary handle and the movable lever are in an open position."

Weber is silent about "a multi-member, pliers-like grip, the grip" having "a stationary handle extending from the shaft" and "a movable lever disposed pivotably and manipulable by a user to toggle between two opposed positions . . . wherein the stationary handle and the movable lever are substantially symmetric relative to a longitudinal axis of the instrument," as amended independent claim 11 recites. Fixed hand grip member 98 and moveable hand grip member 150 of Weber (which would arguably correspond to "the stationary handle and the movable lever" of the claimed invention) are not "substantially symmetric relative to a longitudinal axis of the instrument when the stationary handle and the movable lever are in a closed position," as in the claimed invention.

Watschke does not supplement the deficiencies of Weber. Watschke teaches a "surgical instrument" which is "capable of probing tissue, and preferably provides tactile feedback concerning the condition of the tissue" (abstract), and not an instrument with "a stationary handle," much less with "a stationary handle" and "a movable lever disposed pivotably and manipulable by a user to toggle between two opposed positions" and "substantially symmetric relative to a longitudinal axis of the instrument when the stationary handle and the movable lever are in a closed position, and . . . asymmetrical with respect to the longitudinal axis of the instrument when the stationary handle and the movable lever are in an open position," as amended independent claim 11 recites. Figure 20 of Watschke illustrates levers 22 of instrument 10 capable of being "squeezed together" (¶[0088]). Thus, Watschke does not disclose a "stationary handle" or a stationary handle and a movable lever disposed in the configurations recited in claim 11.

Applicants also submit that a person of ordinary skill in the art would not have been motivated to combine the teachings of Weber with those of Watschke, to arrive at the claimed invention. The crux of Weber is a surgical suction forceps that is provided with a "handle squeezable to move the movable jaw relative to the stationary jaw to rearwardly or forwardly cut tissue or grasp tissue." (Abstract). For this, Weber teaches that a "force diverting mechanism is responsive to the force applied to the handle exceeding a predetermined force to provide the surgeon with an indication of the excessive force." Weber further teaches a "suction passage . . . formed in the forceps for aspirating cut tissue," the suction being "produced continuously or controlled via the handle." (Abstract).

In contrast, the crux of Watschke is a surgical suture passer having first and second jaws that are "sized and shaped to probe tissue without substantially damaging or traumatizing the probed tissue." (Abstract). Watschke also teaches "a jaw manipulator capable of moving the jaws" and "a suture manipulation member for movement relative to the body portion between first and second positions in order to pass the suture and dart assembly from the first jaw to the second jaw" (¶[0013]). Accordingly, a person of ordinary skill in the art would not have been motivated to combine the surgical forceps of Weber with the suture manipulator of Watschke.

A person of ordinary skill in the art would also not have been motivated to combine either the "force diverting mechanism . . . responsive to the force applied to the handle exceeding a predetermined force" or the "suction passage" of Weber with the suture manipulation member of Watschke that is specifically configured to allow darts to pass from the first jaw to the second jaw. A person skilled in the art would further not have been motivated to combine the handle design of the surgical forceps of Weber (which allows suction to be produced continuously and controlled via the handle) with the dart transport and dart capturing jaws 152 and 154 of Watschke (which are sized and shaped to be substantially flushed in the clamped position).

For at least these reasons, the subject matter of claims 11, 12 and 14-16 would not have been obvious over Weber and Watschke, whether considered alone or in combination. Withdrawal of the rejection of these claims is also respectfully requested.

Allowance of all pending claims is solicited.

Dated: September 12, 2007

Respectfully submitted,

By Steph A Soff
Stephen A. Soffen
Registration No.: 31,063
Gabriela I. Coman
Registration No.: 50,515
DICKSTEIN SHAPIRO LLP
1825 Eye Street, NW
Washington, DC 20006-5403
(202) 420-2200
Attorneys for Applicants